

MALVERN et al  
Appl. No. 10/523,399  
May 8, 2006

### **REMARKS/ARGUMENTS**

Claims 1-3 stand rejected in the outstanding Official Action. Claim 1 has been amended and therefore claims 1-3 remain in this application.

The Examiner's acknowledgment of the prior art cited in Applicants' previously submitted Information Disclosure Statement is very much appreciated. However, Applicants note that the present case is a national phase entry of a §371 PCT application. Notwithstanding this, the Examiner perhaps overlooked the acknowledgment of Applicants' claim for priority and constructive receipt of the certified copy of the priority document. As the Notice of Acceptance of Application mailed July 29, 2005 confirms that the Patent Office has received the International Search Report, the Examiner is respectfully requested to acknowledge consideration of the prior art cited therein pursuant to U.S. patent practice.

The Patent Office objects to the Abstract. It is appreciated that the Examiner has brought the Abstract to the applicant's attention. It is noted that the objection to the Abstract appears to be an indication that the originally filed specification transmitted from WIPO does not meet the formality requirements of the U.S. Patent and Trademark Office. The Patent Office is reminded that the U.S. Patent and Trademark Office must comply with all articles of the Patent Cooperation Treaty (PCT) including Article 27. It has been held that:

"if the rule and interpretation of the PTO conflicts with the PCT, it runs afoul of Article 27 of the PCT which provides in part:

- (1) No national law shall require compliance with requirements relating to the form or contents of the international application different from or additional to those which are provided for in this Treaty and the Regulations." Caterpillar Tractor v. Commissioner, 231 USPQ 590, 591 (EDVA 1986).

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The Patent Office has referenced this decision in the Official Gazette dated September 9, 1986 (1070 TMOG 5).

As a consequence, the Patent Office may not require Abstract changes as long as the originally submitted documents comply with the PCT requirements. Inasmuch as this specification was forwarded for WIPO, by definition, it meets the PCT requirements (it is not forwarded until it meets the PCT requirements.). Therefore, the objection to the Abstract is respectfully traversed and reconsideration thereof is respectfully requested.

Notwithstanding the above, applicant has included an amended Abstract with less than 150 words.

Claims 1-3 stand rejected under 35 USC §103 as unpatentable over Geier (U.S. Patent 6,577,952) in view of Wang/Gao ("Fuzzy Logic Expert Rule Based Multi-Sensor Data Fusion for Land Vehicle Attitude Estimation"). The Wang/Gao reference is a paper presented at the 19<sup>th</sup> International CODATA Conference in Berlin which took place between November 7 through November 10. The Wang/Gao reference also acknowledges a prior publication printed in September 2004, confirming that the paper's publication date was sometime after September 2004.

As a result, Wang/Gao is not available as a reference against the present application having an International PCT filing date of November 12, 2003 and claiming priority from a UK application filed November 20, 2002. Without the Wang/Gao reference, there is no support for the rejection of claims 1-3 under 35 USC §103 and any further rejection thereunder is respectfully traversed.

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**Examiner Interviews**

Applicants' undersigned representative contacted Examiner Kundu on May 2, 2006, and left a message asking the Examiner to confirm the publication date of the Wang/Gao reference. On May 3, 2006 Examiner Kundu returned Applicants' representative's call and confirmed that Wang/Gao was not prior art. The Examiner indicated that he would provide an Interview Summary Record confirming that Wang/Gao was not prior art.

During the telephone interview, the Examiner indicated, however, that a new interpretation of 35 USC §101 by the Patent Office will result in a new non-statutory rejection of claim 1 and claims dependent thereon. In the Examiner's and apparently the Patent Office's view, a claimed method of calibration does not meet statutory requirements unless and until the calibration is actually applied.

The Examiner indicated that except for the not yet applied §101 rejection, the application was in condition for allowance. On Monday, May 8, 2006, Applicants' representative contacted Examiner Kundu and inquired as to whether a minor modification of claim 1 would place the case in condition for allowance and would be in accord with the new Patent Office interpretation of §101. The proposed amendment to claim 1 added the final step of "applying the bias coefficients to the vibrating structure gyroscope" and was transmitted to the Examiner. The Examiner confirmed that the proposed amendment would render all claims allowed.

Inasmuch as Applicants have amended the abstract to meet the 150-word limit as required and as there is no pending rejection to the claims, all claims are in condition for allowance. In the event the Examiner is of the opinion that a brief telephone or personal

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interview will facilitate allowance of one or more of the above claims, he is respectfully requested to contact Applicants' undersigned representative.

Respectfully submitted,

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